

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

BRIAN BECKER,

Plaintiff,

VS.

DIAMOND STATE INSURANCE
COMPANY, *et al*,

Defendants.

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CIVIL ACTION NO. C-10-287

ORDER

On September 3, 2010, this Court held a hearing to determine whether it had subject matter jurisdiction over the above styled action. At the hearing, Parties made an oral Agreed Motion to Remand. Plaintiff's counsel attested that Plaintiff will not ask for or accept any award in excess of \$75,000, exclusive of interest and costs. The Court GRANTED the oral motion for the reasons discussed below.

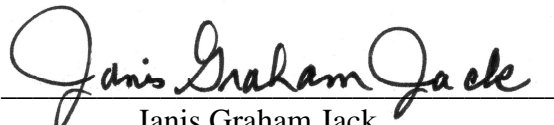
When the alleged basis for federal jurisdiction is diversity under 28 U.S.C. § 1332, a case must be remanded if the removing defendant cannot demonstrate: (1) complete diversity of citizenship; and (2) an amount-in-controversy greater than \$75,000, exclusive of costs and interests. See 28 U.S.C. § 1332(a); 28 U.S.C. § 1447(c).

In this case, the amount-in-controversy was ambiguous at the time of removal because Plaintiff's Original Petition states that Plaintiff seeks damages "not exceeding \$74,499.99." (D.E. 1, Exh. A.) Plaintiff's counsel signed an agreement that "Plaintiff will never plead or request, either in writing or verbally, any more than \$74,999.99." (D.E. 5.) At the hearing, Plaintiff's counsel confirmed that Plaintiff will not ask for or accept an award in excess of \$75,000, exclusive of interest and costs. Plaintiff counsel's statement and Parties' agreement

clarifies that the amount-in-controversy in this action does not exceed \$75,000, exclusive of interest and costs. This Court must therefore remand the case. See Mouton v. Balboa Ins. Co., 2010 U.S. Dist. LEXIS 85984, *4 (E.D. La. July 19, 2010) (remanding action after considering agreement limiting damages below the jurisdictional limit); Carr v. CVS Drug Stores, 2008 U.S. Dist. LEXIS 115699, *20 (W.D. Tex. Oct. 3, 2008) (same).

For the reasons stated above, this Court GRANTED Parties' Agreed Motion to Remand at the hearing and REMANDS this case pursuant to 28 U.S.C. § 1447(c) to the County Court at Law No. 4 of Nueces County, Texas, where it was originally filed and assigned Cause No. 1060557000-4.

SIGNED and ORDERED this 3rd day of September, 2010.



Janis Graham Jack
United States District Judge